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10/722,775	11/26/2003	Rudolph Schoendienst	BRECO 3.0-004	7222

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EXAMINER
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DEUBLE, MARK A

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/722,775

Applicant(s)

SCHOENDIENST, RUDOLPH

Examiner

Mark A. Deuble

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-44 is/are allowed.
- 6) ☐ Claim(s) 1-2, 5-7, 11-13, 16, 21-24 is/are rejected.
- 7) ☒ Claim(s) 3, 4, 8-10, 14, 15, 17-20 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/8/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plurality of wires running longitudinally through the belt of claim 6, the assembly wherein a portion of the horizontal portion of the substantially T-shaped plate provides a driving surface for a drive element of claim 16, and the sensor openings of claim 20 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 6, 16 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to describe the plurality of wires running longitudinally through the belt of claim 6, the assembly wherein a portion of the horizontal portion of the substantially T-shaped plate provides a driving surface for a drive element of claim 16, and the sensor openings of claim 20. While the language of the claims may provide enablement for these claims, the specification must still provide a description of these features to comply with 35 U.S.C. 112, first paragraph.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 describes an assembly wherein a portion of the horizontal portion of the substantially T-shaped plate provides a driving surface for a drive element. This contradicts the specification which states that a portion of the vertical portion of the T-shaped plate provides a driving surface for a drive element and it contradicts claim 17 (which depends from claim 16) which states that the driving surface is located centrally along a vertical axis (which the

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horizontal member does not have). These contradictions render the scope of the claim impossible to ascertain.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-2, 7, and 21-23 rejected under 35 U.S.C. 102(b) as being anticipated by Gelzer (U.S. Patent No. 3,737,024).

Gelzer shows a conveyor system belt assembly comprising a flexible belt 12 having a longitudinal axis and a plurality of plates 25 that are substantially T-shaped in cross section as illustrated in Figs. 2 and 3. Each of the plates has a substantially horizontal portion 27 with a reinforcing rib extending over a short distance between the ends of the horizontal portion and a substantially vertical portion 26 fastened to the belt by a press fit created by rails 13 and 14. The vertical portion of each plate is seated in substantially vertical channels transverse to the longitudinal axis of the belt formed between the teeth of the belt. Because the rails support the belt and the vertical portions of the belt from both sides, deflection of the vertical portion of the plate from the vertical axis of the belt would be less than 5° as the horizontal portion receives a load to be transported around the conveyor system. Thus Gelzer shows all the structure required by claims 1-2 and 21-23.

In regard to claim 7, it should be noted that a recitation of the intended use of the claimed invention does not differentiate the claimed apparatus from a prior art apparatus satisfying the

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claimed structural limitations if the prior art structure is capable of performing the intended use. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Therefore, while the vertical portions of the plates are located on the opposite side of the belt from the drive pulley 20 so that they do contact the drive pulley, they are capable of providing a drive surface for driving the belt assembly through the conveyor system because could interact with a drive placed on the opposite side of the belt from the drive pulley 20.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-2, 5-7, 11-13 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelzer in view of Patin (U.S. Patent No. 5,339,938).

Gelzer shows generally all the structure required by the claims except for the polymeric belt of claim 5, the wires of claim 6, the openings in the belt and the vertical portion of the plate that receive fasteners therethrough to connect the plates to the belt of claims 11-13, the reinforcement rib of claim 23, and the interlocking horizontal portions of claim 24. However, Patin shows a flexible belt with a plurality of interlocking plates 11 fastened thereto by means of a fastener 15 extending through holes in the belt and the plate. Patin generally teaches that the fastener arrangement provides a simple and effective way to attach a plate to a flexible belt and that shaping plates so that they interlock advantageously provides a continuous article support surface. Therefore it would have been obvious to one of ordinary skill in the art at the time of

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the invention to modify Gelzer so that the vertical portions of the plates are fastened to the belt with fasteners extending through holes in the belt and the vertical portion of the plates and so that the horizontal portions of the plates are shaped so that they interlock according to the teachings of Patin. When this is done, the resulting apparatus would have all the structure required by claims 1-2, 7, 11-13 and 21-22 and 24.

In regard the claims 5 and 6, it should be noted that the use of polymeric materials for forming toothed belts and the use of wires for reinforcing such belts is well known in the art and therefore the use of a wire reinforced polymeric material for the belt of Gelzer is deemed to have been an obvious design choice absent some disclosure in the applicant's specification of some unusual advantage or result. *In re Kuhle*, 188 USPQ 7 (CCPA 1975).

***Allowable Subject Matter***

10. Claims 26-44 are allowed.

11. Claims 3-4, 8-10, 14-15, 17-20 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claim 16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Rhoden, Dieckmann, Jr. and Bergmann all show conveyor systems with rigid plates affixed to flexible belts in a fashion similar to that of the present invention.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (703) 305-9734. The examiner can normally be reached on Monday through Friday except for alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher P Ellis can be reached on (703) 308-2560. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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